

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) Case No. 1:04-cr-385 (LMB)
)
)
ALI AL-TIMIMI,)
)
Defendant.)
)

**RENEWED MOTION FOR ACQUITTAL REGARDING COUNTS 7 AND 8 IN LIGHT
OF INTERVENING SUPREME COURT AUTHORITY**

Pursuant to the Fourth Circuit’s modified remand order of July 26, 2016 [Dkt. No. 431], Defendant Dr. Ali Al-Timimi respectfully submits this renewed motion for a judgment of acquittal on Counts 7 and 8 of the operative indictment in light of the Supreme Court’s intervening opinion in *Johnson v. United States*, 135 S. Ct. 2551 (2015). *Johnson* invalidated the “residual clause” portion of the “violent felony” definition found in the Armed Career Criminal Act (ACCA) after concluding that both features of its two-part categorical methodology—its “ordinary case” inquiry and its “risk” inquiry—suffered from “hopeless indeterminacy” that rendered it unconstitutionally vague. *Id.* at 2557-58.

In this case, Defendant Al-Timimi’s convictions under Counts 7 and 8 rely on the similarly worded residual clause found in 18 U.S.C. § 924(c)(3)(B). As outlined in the accompanying memorandum [Dkt. No. 433], this clause uses an analogous two-part categorical methodology that combines an identical “ordinary case” inquiry with a near-identical “risk” inquiry. Accordingly, Al-Timimi respectfully submits that *Johnson* renders § 924(c)(3)(B) unconstitutionally vague, that his corresponding convictions under Counts 7 and 8 should be set

aside, and that his sentence should be adjusted accordingly as detailed in the attached proposed order.

The parties have conferred, and the government opposes the motion.

Dated: October 25, 2016

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that on October 25, 2016, I will file the foregoing document on the CM/ECF system, which will then serve it by sending an electronic notification to:

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